

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2005 FEB 15 P 12:46

U.S. DISTRICT COURT  
DISTRICT OF MASS.

JULIAN MONTESINO  
PLAINTIFF, PRO-SE

VS.

CIVIL ACTION No. \_\_\_\_\_

BRUCE E. CHADBOURNE, AND THE  
IMMIGRATION AND NATURALIZATION  
SERVICE ("INS") CUSTOM SERVICE  
RESPONDENTS

**05 - 10319 RWZ**

*Referred to New Magistrate Judge*

COMPLAINT

INTRODUCTION

1. This is a complaint for Declaratory Judgement Action to declare that the defendant Immigration and naturalization Service ("INS") cannot legally continue to deprive him of his liberty by issuing a detainer warrant for his deportation as the plaintiff admits that he is an "Excludable" being held under the defendant's statutory grant of authority to detain excludable aliens 8 USC SECTION 1227. The plaintiff states that he cannot be returned to Cuba and that therefore the defendant does not have the statutory authority to detain him Four times. The plaintiff further states that he has a due process liberty interest under the United states constitution and that his detention as well as the proceedings employed by the respondent to justify detention violates

plaintiff's right to the due process and that his detention violates customary International Law and is therefore illegal.

#### JURISDICTION

2. This Court has jurisdiction pursuant to the Declaratory Judgement Act. 28 U.S.C.S. sec. 2201 and for a judicial review under 5 U.S.C.S. sec. 701 et seq. relating to Administrative proceedings arising under the Immigration and Nationality act. 8 U.S.C.S. 1182 and the jurisdiction is vested in this court pursuant to such status that are guaranteed by the Fourteenth Amendment to the United States Constitution.

#### PARTIES

3. The plaintiff Julian Montesino is a Naturalized Citizen of Cuba and is considered a "Excludable Alien" who is presently in the custody of the Commonwealth of Massachusetts and the Department of Correction, where he is presently housed at MCI-Norfolk, Post Office Box 43, Norfolk, Massachusetts 02056.

4. The defendant Bruce E. Chadborne is the District Director of the Immigration and Naturalization Service, Custom Service located at JFK Federal Building, Room 1775, Government Center, Boston, Massachusetts and among other powers and duties of deportation proceedings.

FACTS

5. The plaintiff Julian Montesino, Pro-Se, is a native and citizen of Cuba having arrived in the United States On May 20, 1980, At Key West Florida as one of 100,000 Cuban refugees of the Mariel boatlift.

6. The plaintiff was immediately detained by order of the Immigration and Naturalization Service ("I.N.S.") because Cuba, my nation of citizenship would not accept my repatriation and I was shortly thereafter ordered deported in August 1980.

7. The plaintiff On September 22, 1982, some two years after detention the Immigration Naturalization service approved his parole release to a student program for detained Mariel Cubans or "Excludable Aliens".

8. On February 14, 1989, the plaintiff was arrested for minor criminal Offenses and was subsequently held in detention, whereby, on April 1989 I.N.S. issued a warrant and plaintiff remained in custody until his release On January 7, 1992, with an indefinite parole.

9. On March 3, 1999, the plaintiff was rearrested for minor offenses, a non-aggravated felony and ultimately detained and warrant issued by INS On July 1999, until plaintiff's release on parole on April 29, 2002

10. The plaintiff is presently incarcerated at the filing of this complaint for declaratory judgement, and is serving a sentence for possession of a class B substance for which I received a prison term and would be due for release, However, a warrant for my deportation has issued, thus depriving me of my liberty interest.

11. The plaintiff states that by revoking his parole and issuing a warrant pursuant to 8 U.S.C. Sec. 1182 (d)(5)(A) 1988. the defendant effectively deprived the plaintiff from parttaking in any meaningful prison programs such as minimum status work release, or any Community base program to reintegrate him back into society, as a result of the detainer INS filed that violates his right to due process of the Law under the United States Constitution.

12. The defendant's have not provided any good reason to believe that there is a significant likelihood of plaintiff's removal in the reasonably foreseeable future, thus, the acts of the defendant to issue warrants detaining him constitutes an illegal deprivation of the plaintiff's rights under the law.

13. Plaintiff is entitled to a declaratory judgement declaring the acts of the defendant to issue a warrant or detainer for deportation when the plaintiff has been deported and is considered a "excludable alien", to be invalid, illegal, and deprivation of those rights secured to plaintiff and others similarly situated

by the United States Constitution.

14. The Plaintiff have no plain, complete and adequate remedy at law for the violation of his right as set forth in this complaint.

#### CLAIM OF RELIEF

The Plaintiff repeats and realleges paragraphs 1-14 of this complaint as if fully set forth herein.

(a) The participation bt the defendant immigration naturaliation service ("INS") custom service in continuing to issue warrants for plaintiff for violation of Immigration parole without lawful authority pursuant 8 U.S.C. sec. 1182(d)(5)(A) 1988. Has violated and will in the future to violate, the rights of plaintiff as guaranteed by the Fourteenth Amendment to the United States Constitution, and (b) not to be subjected to the arbitrary exercise of power and deprived of the equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution.

#### PRAYER FOR RELIEF

Wherefore, plaintiff prayers that this court grant the following relief to him.

(a) Enter a Declaratory Judgement that any actions taken, or to be taken by the defendant Attorney General as a member of the Immigration and Naturalization, Custom Service are unlawful and

in violation of the rights of plaintiff.

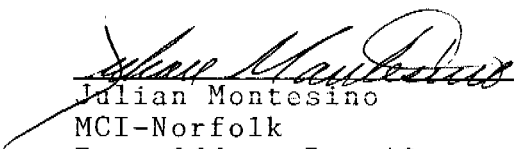
(b) Issue a preliminary injunction enjoining defendant (INS) from issuing the warrant that is preventing him from participating into Minimum security Community base work release programs as a member of INS detained status, in any way pending the final disposition of this action.

(c) Issue a permanent injunction barring the defendant INS from issuing a detainer as an excludable alien until normal relation is established between Cuba and the United States where he can be repatriated to his country.

(d) Grant the appropriate relief to plaintiff who has been prejudiced by the decision of parole review board or the Attorney General Of the United states.

(e) Grant such other relief as is just and equitable.

By the Plaintiff, pro-se

  
Julian Montesino  
MCI-Norfolk  
Post Office Box 43  
Norfolk, Mass 02056

Dated: February 14, 2005

JS 44  
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS** Julian Montesino  
MCI-Norfolk  
Post Office Box 43  
Norfolk, Mass 02056

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**  
(EXCEPT IN U.S. PLAINTIFF CASES)

Cuban National

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

None

**DEFENDANTS**

Bruce E. Chazab  
Immigration and Naturalization  
Service ("INS") Custom Service  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** United States  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEY (IF KNOWN)

Unknown

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ PTF ☒ DEF ☐ 1 ☒ 1 Incorporated or Principal Place of Business in This State ☐ P1 ☐ DEF ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☒ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☒ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Marine Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 366 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airline Regs. <input type="checkbox"/> 460 Occupational Safety/Health <input type="checkbox"/> 490 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 420 Copyrights <input type="checkbox"/> 430 Patent <input type="checkbox"/> 440 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Selective Service <input type="checkbox"/> 490 Securities/Commodities/Exchange <input type="checkbox"/> 475 Customer Challenge 12 USC 3410 <input type="checkbox"/> 491 Agricultural Acts <input type="checkbox"/> 492 Economic Stabilization Act <input type="checkbox"/> 493 Environmental Matters <input type="checkbox"/> 494 Energy Allocation Act <input type="checkbox"/> 495 Freedom of Information Act <input type="checkbox"/> 496 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 498 Constitutionality of State Statutes <input type="checkbox"/> 499 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input checked="" type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 601 HIA (1395m) <input type="checkbox"/> 602 Black Lung (923) <input type="checkbox"/> 603 DIWC/DIWW (405(g)) <input type="checkbox"/> 604 SSID Title XVI <input type="checkbox"/> 605 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 26 USC 7609	

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

The Plaintiff has been adjudicated deported (by INS) and classified as "excludable alien" status, the continuing to isse warrant for my deportation is an violation under the U.S. Constitution

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Montesino vs. Immigration and Naturalization Service, Custom Service **FILED IN CLERKS OFFICE**
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ☒ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403) YES ☐ NO ☒
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? YES ☐ NO ☐
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284? YES ☒ NO ☐
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)). YES ☒ NO ☐
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE? EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE? EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME None Plaintiff Julian Montesino, pro-se

ADDRESS MCI-Norfolk

TELEPHONE NO. Post Office Box 43

Boston, Massachusetts 02056

(Att3Cover sheet local.wpd - 11/27/00)